

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on February 14, 2001 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **HB 261 - 2-12-01**
HB 545 - 2-12-01
HB 546 - 2-12-01

HB 521 - 2-12-01

Executive Action:

HB 254 - DPAA**HB 419 - DPAA****HB 521 - DP****HB 545 - Table****HB 546 - Table****HEARING ON HB 261**

Sponsor: Rep. Larry Jent, HD 29, Bozeman said this Bill is directed toward the drug methamphetamine. This is the worst drug of all the illegal drugs. There have been many cases in federal courts and every methamphetamine case he has been involved in, there has been a murder. The reason is, this drug is a highly addictive drug, a drug that causes people to be hyperactive. They become paranoid, start hallucinating and then carry guns.

The cooking of methamphetamine is extremely toxic. It takes specially trained drug officers to clean up a methamphetamine lab because they need the special training, equipment and the necessary precautions. It can cost thousands of dollars to clean up a lab. It is illegal to possess, sell or possess precursors of methamphetamine which include the chemicals that make up the drug. Between the possession of the precursors and the in-product, there is the drug lab.

The Bill seeks to create a new crime of having the lab. This is not a Bill that seeks to criminalize the possession of flasks, beakers and condensers because in the Bill the requirement or the intent is to actually make the product.

The Bill provides penalties for possessing the precursors with the intent to set up a lab, possessing the equipment with the intent, or selling the makings of a lab. It provides for a penalty of 20 years not to exceed 25 years if there is a substantial risk to safety, or within 500 feet of a business, residence or church, or there is a juvenile present, or a firearm or booby trap.

EXHIBIT(juh37a01) EXHIBIT(juh37a02)

Proponents: Joe Thaggart, Assistant Attorney General, Montana Department of Justice.

Jim Hutchison, Forensic Toxicologist, Lab Supervisor, Crime Lab.

Mike Batista, Administrator, Division of Criminal Investigation, Department of Justice.

Opponents: Mike Barrett, Helena, **EXHIBIT**(juh37a03)

Questions from Committee Members and Responses: Reps. Peterson, Harris, Eggers, Hurdle, Noennig, Clark, Adams to Mr. Batista, Mr. Thaggart, Mr. Hutchison, Rep. Jent with concerns and for clarification.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 29.6}

{Tape : 1; Side : B; Approx. Time Counter : 0.1 - 30.1}

Closing by Sponsor: Rep. Jent closed the Hearing on HB 261 by explaining proposed amendments. He said this is a Bill that responds to the times of drug law enforcement in Montana.

HEARING ON HB 545 AND HB 546

Sponsor: Rep. Dave Gallik, HD 52, Helena said these two Bills are modifications to family law sections of the Code. HB 545 does one thing, basically and that is to provide a modification of a final parenting plan or an amendment to a final parenting plan, that it be served and treated similar to an initial pleading, such as a petition or a complaint. Therefore, the rules of civil procedure are going to be applicable to a petition for amendment or a response to a petition for amendment of a final parenting plan. This Bill also requires that when there is a petition for amendment to a final parenting plan or a modification to a final parenting plan, that it be required to include an affidavit supporting it so that the attorney can insure that once a petition is filed, it is properly served pursuant to the rules of civil procedure and that there is supporting documentation for that in the form of an affidavit.

HB 546 also deals with the family law section and this is an amendment to Section 44-208 of the Montana Code Annotated. He proposed an amendment to strike all the language on Page 2, lines 11 through 14.

He referred to Page 1 and said what it purports to do is to provide that when there is a modification for child support, (line 18) he wants to segregate those from "child support to maintenance". The first provision would be only as a modification for child support which would be a little lesser of a standard than is currently required on line 20 of Page 1. The proposed amendment to this section would provide that a substantial change and circumstance of the child or parent be

present. That standard is more in keeping with what we do in our legal system now with regard to changes for child support modification.

Proponents: None

Opponents: None

Questions from Committee Members and Responses: Reps. Harris, Hurdle, Noennig, Peterson, Shockley to Rep. Gallik for explanation and clarification.

{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 29.8}

Closing by Sponsor: Rep. Gallik closed the Hearing on HB 545 and HB 546.

HEARING ON HB 521

Sponsor: Rep. Brad Newman, HD 38, Butte said the State of Montana does have some enhanced penalties. For example, an assault against a person under the age of 14 has an enhanced penalty. If someone causes bodily injury to another adult it is a misdemeanor. If that same bodily injury is to a child, it becomes a felony.

This past summer, the Supreme Court ruled that the State, or prosecution, in a situation that involves enhanced penalties must plead and prove the enhancing factor or the enhancing circumstance. For example, in the case of an assault with a weapon, or possibly some other offense with the use of a weapon, the prosecution has the burden to prove beyond a reasonable doubt, all the elements of the underlying offense, plus the burden to prove by that same standard, the enhancement factor, the use of a weapon in the commission of the crime.

Prosecutors' responses to how they go about getting these enhanced penalties have been sporadic, have been inconsistent. Based on the Supreme Court decision, it is clear that as a legislative matter, or a matter of state policy, we need to provide some direction to prosecutors. This Bill will make it uniform. This also provides protection for the accused.

Proponents: John Connor, Attorney General's Office, Montana County Attorney's Association and the Department of Justice said the Bill will amend the law or create a provision in the law that is consistent with the United States Supreme Court decision, Apprendi vs. New Jersey.

Opponents: None

Questions from Committee Members and Responses: Reps. Harris, Peterson, Shockley to Mr. Connor.

Closing by Sponsor: Rep. Newman closed the Hearing on HB 521 by quoting Mr. Connor. "If you are a champion of the rights of the accused you will like this Bill. If you are an officer of the Court and you are bound to do the right thing, you will live with this Bill".

EXECUTIVE ACTION ON HB 521

Motion/Vote: REP. GUTSCHE moved that HB 521 DO PASS. #1 Motion carried unanimously 20-0.

EXECUTIVE ACTION ON HB 465

Motion/Vote: REP. NOENNIG moved to change his previous day's motion to postpone HB 465 until and through Monday. #2 Motion carried 15-5 with Reps. Laszloffy, Adams, Curtiss, Holden and Rice voting no.

Discussion: Rep. Noennig explained the ruling on postponing and the word "indefinitely" and why he made the above motion.

EXECUTIVE ACTION ON HB 419

Motion: REP. GALLUS moved that HB 419 DO PASS. #3

{Tape : 2; Side : B; Approx. Time Counter : 0.1 - 23.4}

Motion: REP. SHOCKLEY moved that HB 419 BE AMENDED. #4
EXHIBIT(juh37a04)

Discussion: Reps. Hurdle, Shockley, Noennig, Younkin, Harris, Laszloffy, Gallus, Newman, Clark, Peterson, Holden.

{Tape : 2; Side : B; Approx. Time Counter : 23.4 - 29.7}

Vote: Motion #4 carried 16-3 with Reps. Gutsche, Harris and Mangan voting no.

Motion: REP. SHOCKLEY moved that HB 419 DO PASS AS AMENDED. #5

Discussion: Reps. Peterson, Rice, Gallus, Shockley.

Vote: Motion #5 carried 11-9 with Reps. Laszloffy, Adams, Clancy, Curtiss, Holden, Peterson, Rice, Wolery and Younkin voting no.

EXECUTIVE ACTION ON HB 546

Motion: REP. LASZLOFFY moved that HB 546 DO PASS. #6

Discussion: Reps. Noennig, Eggers, Gutsche, Hurdle, Shockley.

Motion/Vote: REP. YOUNKIN moved that HB 546 BE AMENDED. #7
Motion carried unanimously 20-0.

Discussion: Reps. Harris, Noennig, Gallus, Peterson.

{Tape : 3; Side : A; Approx. Time Counter : 0.1 - 29.7}

{Tape : 3; Side : B; Approx. Time Counter : 0.1 - 0.4}

Motion: REP. PETERSON moved that HB 546 BE POSTPONED. #8

Motion/Vote: REP. GALLUS moved a substitute motion that HB 546 BE TABLED. #9 Motion carried 12-8 with Reps. Shockley, Clark, Eggers, Gutsche, Hurdle, Mangan, Newman and Younkin voting no.

EXECUTIVE ACTION ON HB 545

Motion: REP. WOLERY moved that HB 545 DO PASS. #10

Discussion: Rep. Noennig.

{Tape : 3; Side : B; Approx. Time Counter : 0.4 - 3.6}

Motion/Vote: REP. YOUNKIN moved that HB 545 BE TABLED. #11
Motion carried 18-2 with Reps. Gallus and Gutsche voting no.

EXECUTIVE ACTION ON HB 254

Motion: REP. PETERSON moved that HB 254 DO PASS. #12

Motion: REP. PETERSON moved that HB 254 BE AMENDED. #13

Discussion: Reps. Peterson, Clancy, Hurdle, Mangan, Noennig.

Substitute Motion/Vote: REP. NOENNIG made a substitute motion that HB 254 BE AMENDED. #14 Substitute motion carried unanimously. 20-0

{Tape : 3; Side : B; Approx. Time Counter : 3.6 - 15.8}

Motion/Vote: REP. PETERSON moved that HB 254 DO PASS AS AMENDED. #15 Motion carried 13-7 with Reps. Clark, Clancy, Eggers, Gallus, Gutsche, Hurdle and Mangan voting no.

EXECUTIVE ACTION ON HB 465

Discussion: Rep. Younkin suggested the above Bill be placed on a ballot referendum.

Motion: REP. GALLUS moved that HB 465 DO PASS for the purpose of an amendment. #16

Discussion: Mr. MacMaster, Reps. Harris, Newman, Younkin, Noennig, Hurdle, Gutsche,

Motion: REP. NEWMAN moved that HB 465 BE POSTPONED UNTIL FRIDAY. #17.

{Tape : 3; Side : B; Approx. Time Counter : 15.8 - 29.7}

Vote: Motion #17 carried 18-2 with Reps. Adams and Clancy voting no.

ADJOURNMENT

Adjournment: 11:10 A.M.

REP. JIM SHOCKLEY, Chairman

MARY LOU SCHMITZ, Secretary

JS/MS

EXHIBIT (juh37aad)